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2015 IL App (3d) 130852-U

Order filed January 20, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

DENNIS WARD,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois,
)	
v.)	
)	Appeal No. 3-13-0852
DAVID WEISBAUM, Director, Index)	Circuit No. 13-MR-277
Department, Office of the Secretary of State,)	
and VICKI SHEETS, FOIA Officer, Office of)	
the Secretary of State,)	Honorable
)	Roger D. Rickmon,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice McDade and Justice Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court properly dismissed the plaintiff's lawsuit for injunctive relief under the FOIA pursuant to section 2-619 of the Code of Civil Procedure where the home addresses of two individuals requested by the plaintiff were exempt from disclosure.

¶ 2 The plaintiff, Dennis Ward, filed a lawsuit for injunctive relief against the defendants, David Weisbaum and Vicki Sheets, alleging that the defendants improperly withheld the home addresses of Christine Richardson and Mary Smiley when the plaintiff requested the addresses

pursuant to the Freedom of Information Act (FOIA). The defendants moved to dismiss the plaintiff's lawsuit under section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2012)), arguing that the home addresses of Richardson and Smiley were exempt under section 7(1)(b) of the FOIA (5 ILCS 140/7(1)(b) (West 2012)). The trial court granted the defendants' motion to dismiss. The plaintiff appeals. We affirm.

¶ 3

FACTS

¶ 4

In 2011, the plaintiff sent a FOIA request to the Index Department of the office of the Secretary of State (the Index Department). In his FOIA request, the plaintiff sought the work and home addresses for Dennis B. Coy, former Kankakee County recorder of deeds, Richardson, Kankakee County deputy recorder of deeds, and Smiley, a notary public, because he wanted to serve them with summonses in a separate case involving his property. On September 23, 2011, defendant Weisbaum, director of the Index Department, sent a letter to the plaintiff acknowledging the plaintiff's request and stating that the Index Department would supply him with the requested information if the plaintiff submitted a subpoena pursuant to which he was requesting Richardson's address. There is no evidence in the record that a subpoena was ever submitted. On February 7, 2012, Weisbaum sent another letter to the plaintiff stating that he had received and reviewed the plaintiff's FOIA request for information regarding Richardson, Coy, and Smiley. The letter stated that the Index Department had no records for Coy. Notary public applications for Smiley and Richardson were enclosed with the letter, but private information, including home contact information, was redacted. The documents provided only an employer address for Smiley and Richardson—189 East Court Street, Kankakee, Illinois.

¶ 5

On November 2, 2012, the plaintiff sent another FOIA request to the Index Department. In a cover letter, the plaintiff stated that the address previously provided was no longer active.

Defendant Vicki Sheets, a FOIA officer at the Index Department, responded in a letter dated November 14, 2012. Sheets stated that the Index Department had received the plaintiff's letter requesting (1) the current home and work addresses of Richardson and Smiley and (2) file stamped copies of all documents received with regards to Richardson, Smiley, and Coy. Sheets stated that the work address on file for Richardson and Smiley was County of Kankakee, 189 East Spinning Wheel Road, Kankakee, Illinois. Sheets further stated that her office had no further information on Smiley, Richardson, and Coy, and that private information—including home addresses—was not available through FOIA.

¶ 6 The plaintiff sent summonses to Richardson and Smiley at the address provided by Sheets. However, the Kankakee County sheriff was unable to deliver the summonses, stating that no such address existed in Kankakee.

¶ 7 On January 31, 2013, the plaintiff filed this action against the defendants, arguing that the defendants had no basis for withholding Richardson's and Smiley's home addresses from him. The defendants filed a motion to dismiss pursuant to section 2-619(a)(9) of the Code, arguing that they had already complied with the plaintiff's FOIA request by providing him with nonexempt information within their possession and that home addresses were exempt from disclosure under section 7(1)(b) of the FOIA. The plaintiff filed a response to the defendants' motion, arguing that his FOIA request bore on the public duties of public employees because he sought to serve summonses on Smiley and Richardson. Because of this, the plaintiff argued, their home addresses were not exempt from disclosure under section 7(1)(c) of the FOIA. The plaintiff also noted that the work addresses that had been provided to him by Sheets did not exist.

¶ 8 The circuit court granted the defendants' motion to dismiss. The plaintiff filed a timely notice of appeal.

¶ 9

ANALYSIS

¶ 10

On appeal, the plaintiff argues that the circuit court erred in granting the defendants' motion to dismiss his complaint because the home addresses of Smiley and Richardson were not exempt from disclosure pursuant to section 7(1)(c) of the FOIA. The defendants respond that the home addresses are exempt from disclosure under section 7(1)(b) of the FOIA and that, consequently, section 7(1)(c) is inapplicable. We review the trial court's grant of the defendants' motion to dismiss pursuant to section 2-619 of the Code *de novo*. *Lacey v. Village of Palatine*, 232 Ill. 2d 349, 359 (2009).

¶ 11

Under the FOIA, "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2 (West 2012). Sections 7(1)(b) and 7(1)(c) of the FOIA provide two different bases under which information is exempt from disclosure. Under section 7(1)(b) of the FOIA, *private* information is exempt from inspection or copying unless disclosure is required by another provision of the FOIA, a state or federal law, or a court order. 5 ILCS 140/7(1)(b) (West 2012). "Private information *** includes home address *** except as otherwise provided by law or when compiled without possibility of attribution to any person." 5 ILCS 140/2(c-5) (West 2012). Under section 7(1)(c) of the FOIA, "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" is exempt from disclosure unless the individual subjects of the information consent to disclosure in writing. (Emphasis added.) 5 ILCS 140/7(1)(c) (West 2012) "The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy." *Id.* Where a public body is able to prove that a

document requested pursuant to the FOIA falls within one of the categories of exemptions enumerated in section 7 of the FOIA, no further inquiry by the court is necessary. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 408 (1997).

¶ 12 The home addresses of Richardson and Smiley are private information under section 2(c-5) of the FOIA unless otherwise provided by law or if the addresses can be compiled without attributing them to an individual. Clearly, the home addresses of Richardson and Smiley cannot be disclosed to the plaintiff without attributing the addresses to Richardson and Smiley. Further, neither party points to any provision of law that would render the home addresses of Smiley and Richardson anything other than private information, nor can we find any such provision of law. Therefore, the home addresses of Smiley and Richardson are private information under the FOIA.

¶ 13 Because the home addresses of Richardson and Smiley are private information, the addresses are exempt from disclosure under section 7(1)(b) of the FOIA "unless disclosure is required by another provision of this Act, a State or federal law or a court order." 5 ILCS 140/7(1)(b) (West 2012). Neither party has pointed to any court order or provision of federal or state law that would require disclosure of the home addresses.

¶ 14 Plaintiff cites *Mason v. Smith*, 9 Ill. App. 3d 300 (1972), *Stash v. Doll*, 223 Ill. App. 3d 662 (1992), and *Jones v. Shallow*, 201 Ill. App. 3d 594 (1990) for the proposition that plaintiffs involved in litigation against individual defendants are entitled to inquire about defendants' current home addresses to the office of the Secretary of State (Secretary of State). However, none of those cases stand for that proposition. Rather, each of those cases involved the effect of requesting a defendant's address from the Secretary of State on a trial court's decision to dismiss a lawsuit for lack of diligence in obtaining summons. See *Mason*, 9 Ill. App. 3d at 301-02

(holding that the plaintiffs' suit should not have been dismissed where, among other things, the plaintiffs had made inquiries of the Secretary of State concerning the defendant's last known address); *Stash*, 223 Ill. App. 3d at 664-65 (holding that the plaintiff's lawsuit should not have been dismissed where the defendant resided in Illinois and failed to provide the Secretary of State with his current address); *Jones*, 201 Ill. App. 3d at 597 (holding that there was lack of diligence in serving summons where the plaintiff waited six months after filing suit to request the defendant's current home address from the Secretary of State). Furthermore, neither *Mason*, *Stash*, nor *Jones* involved a plaintiff requesting a defendant's address under the FOIA.

¶ 15 Additionally, *Mason*, *Stash*, and *Jones* all involved lawsuits resulting from traffic accidents. *Mason*, 9 Ill. App. 3d at 301; *Stash*, 223 Ill. App. 3d at 663; *Jones*, 201 Ill. App. 3d at 595. Presumably, the plaintiffs in those cases requested that the Secretary of State disclose the addresses of the defendants obtained from driver's license and vehicle registration records. Under section 2-123 of the Illinois Vehicle Code (Vehicle Code), the Secretary of State may disclose personally identifying information—including home addresses—obtained in connection with a driver's license, vehicle, or title registration for use in court proceedings, including for the service of process. 625 ILCS 5/2-123(f-5)(5), 1-159.2 (West 2012). Procedures for requesting information under section 2-123 of the Vehicle Code are contained in section 1002.40 of title 92 of the Illinois Administrative Code. Among these procedures is the requirement that requests for information be signed and notarized. 92 Ill. Adm. Code 1002.40 (2009). All information requested from the Secretary of State by the public should be directed to the director of the department that maintains that record. 2 Ill. Adm. Code 550.10 (2007). The Department of Driver Services and the Department of Vehicle Services of the office of the Secretary of State maintain driver's license and vehicle registration records. 2 Ill. Adm. Code 550.210(t), (u)

(2011).

¶ 16 In this case, the plaintiff did not request home address information from the Department of Driver Services or the Department of Vehicle Services pursuant to section 2-123 of the Vehicle Code. Rather, the plaintiff sent a FOIA request to the Index Department, which does not maintain driver's license and vehicle registration records but which, among other duties, "maintains all notary public commissions and ethics statements." 2 Ill. Adm. Code 550.210(q) (2011). The plaintiff's request was not notarized, as notarization is not required under the FOIA. Pursuant to the plaintiff's FOIA request, the Index Department released the notary public applications of Smiley and Richardson and disclosed their last known work addresses. Disclosure of their home addresses was not required under the FOIA or any other federal or state law. Additionally, the plaintiff had no court order requiring the Index Department to disclose their home addresses. While the plaintiff may be able to request the home addresses of Smiley and Richardson from the Secretary of State for the purpose of serving summonses under section 2-123 of the Vehicle Code, he must do so through the proper department using the proper methods.

¶ 17 Because Richardson's and Smiley's home addresses are private information under the FOIA, they are exempt from disclosure under section 7(1)(b) of the FOIA. Since we hold that the addresses are exempt *private* information under section 7(1)(b), we need not consider the plaintiff's argument that the addresses are not exempt *personal* information under 7(1)(c) of the FOIA because the addresses bear on the public duties of public employees. While *personal* information may be disclosed under section 7(1)(c) if written consent is obtained from the subject of the information, there is no consent provision for *private* information exempt under section 7(1)(b). Consequently, we need not inquire as to whether or how consent for disclosure

could have been obtained from Richardson and Smiley. Since the Secretary of State was able to prove that the requested home addresses were exempt under section 7(1)(b), no further inquiry is necessary. *See Lieber*, 176 Ill. 2d at 408. The Index Department disclosed all that was required when it disclosed the employer addresses of Richardson and Smiley that it had on file.

Therefore, the plaintiff's lawsuit was properly dismissed by the circuit court.

¶ 18

CONCLUSION

¶ 19

The judgment of the circuit court of Will County is affirmed.

¶ 20

Affirmed.